
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

REBECCA McCANN,

Plaintiff,

vs.

SEAN WULFE McCANN,

Defendant.

**MEMORADNUM DECISION AND ORDER
GRANTING SUMMARY JUDGMENT**

Case No. 2:23CV0028 DAK

Judge Dale A. Kimball

This matter is before the court on Plaintiff's Motion for Summary Judgment against Defendant Sean Wulfe McCann. Defendant did not respond to the motion, and the time for doing so has expired. Pursuant to local rule 7-1(g), the court has concluded that oral argument would not be helpful or necessary, and thus the court will determine the motion on the basis of the written memoranda. *See* DUCivR 7-1(g).

Summary judgment is appropriate if the movant establishes that there is no genuine dispute about the material facts and the law entitles it to judgment. Fed. R. Civ. P. 56(a). If, as is the case here, the moving party has the burden of proof, the moving party must establish, as a matter of law, all essential elements of the issue before the nonmoving party can be obligated to bring forward any specific facts alleged to rebut the movant's case. *Pelt v. Utah*, 539 F.3d 1271, 1280 (10th Cir.2008). If the moving party properly supports its motion, the burden shifts to the non-moving party, "who may not rest upon the mere allegation or denials of his pleadings, but must set forth specific facts showing that there is a genuine issue for trial." *Muck v. United States*, 3 F.3d 1378, 1380 (10th Cir.1993). In setting forth these specific facts, the

nonmovant must identify the facts “by reference to affidavits, deposition transcripts, or specific exhibits incorporated therein.” *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 671 (10th Cir.1998).

In this case Plaintiff sent Defendant various Requests for Admissions on April 4, 2023. Defendant never responded or objected to those requests. Instead, he simply allowed them to be deemed automatically admitted. “A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.” Fed. R. Civ. P. 36(a)(3). Defendant has therefore admitted to all of the material facts of this case, including the following:

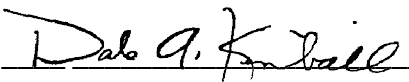
Defendant disclosed and distributed intimate images of her on various Internet websites and that did not have Plaintiff’s consent to disclose or distribute her intimate images to others. Plaintiff had provided the intimate images to Defendant solely for his personal and private enjoyment, and when Plaintiff provided the images to Defendant, they were together. However, at the time of Defendant’s unlawful distribution, the parties were separated. Defendant posted the Plaintiff’s private intimate images online intentionally, without consent, and with reckless disregard for Plaintiff’s rights. By posting Plaintiff’s private intimate images online without Plaintiff’s consent, Defendant violated 15 U.S.C. § 6851.6. Plaintiff was injured and damaged as a result of Defendant’s violations of 15 U.S.C. § 6851.7 Under 15 U.S.C. § 6851 Plaintiff is entitled to statutory damages of \$150,000.00 against the Defendant. Under 15 U.S.C. § 6851 Plaintiff is entitled to a mandatory award of her attorney’s fees and costs against the Defendant.

Under these circumstances in which Defendant did not respond to the Requests for Admission and did not respond to the Motion for Summary Judgment—and Plaintiff has met her burden in demonstrating that there is no genuine dispute about the material facts and that the law entitles her to judgment, the court must grant summary judgment.

Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment [ECF No. 15] is GRANTED. Plaintiff is entitled to statutory damages of \$150,000.00 against Defendant, in addition to her reasonable attorney's fees and costs incurred in pursuing this case, which will be determined at a later date.

DATED this 2nd day of August, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Judge